

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re AMERICAN REALTY CAPITAL	:	Civil Action No. 1:15-mc-00040-AKH
PROPERTIES, INC. LITIGATION	:	
	:	<u>CLASS ACTION</u>
	:	
This Document Relates To:	:	
	:	
ALL ACTIONS.	:	
	X	

DECLARATION OF MICHAEL JOAQUIN REGARDING NOTICE AND CLAIMS  
PROCESS

I, MICHAEL JOAQUIN, declare and state as follows:

1. I am a Senior Vice President of Securities at Gilardi & Co. LLC (“Gilardi”), located at 3301 Kerner Boulevard, San Rafael, California 94901. I make this declaration based on personal knowledge, and if called to testify I could and would do so competently.

2. At the request of Lead Counsel Robbins Geller Rudman & Dowd LLP, I am providing this declaration to give the Court and the parties to the above-captioned action further information about the procedures and methods that will be used to provide notice of the proposed Settlement to the investors who make up the Class, and the administration of the claim process.

3. Gilardi was retained by Lead Counsel and seeks appointment by the Court to provide notice and claims administration services for the Settlement reached in the above-captioned action. The Class consists of all Persons who purchased or otherwise acquired ARCP Securities between February 28, 2013 and October 29, 2014. Excluded from the Class are: Defendants, members of the immediate family of any of the Defendants, any person, firm, trust, corporation, officer, director or other individual or entity in which any Defendant has a controlling interest or which is related to or affiliated with any Defendant and the legal representatives, agents, affiliates, heirs, successors-in-interest or assigns of any such excluded party. For avoidance of doubt, this exclusion does not extend to: (1) any investment company or pooled investment fund in which an Underwriter Defendant has a direct or indirect interest, or as to which its affiliates may act as an advisor, but of which an Underwriter Defendant or its respective affiliates is not a majority owner or does not hold a majority beneficial interest; or (2) any employee benefit plan as to which an Underwriter Defendant or its affiliates acts as an investment advisor or otherwise may be a fiduciary; provided, however, that membership in the Class by such investment company, pooled investment fund or employee benefit plan is limited to transactions in ARCP Securities made on behalf of, on for the benefit of, persons other than persons that are excluded from the Class by

definition. In other words, the Underwriter Defendants are excluded from making a claim on their own behalf for their ownership share in any of the above entities. The Class also excludes any person or entity that entered into a settlement agreement or otherwise provided a release to any Defendant relating to or arising from the purchase or other acquisition of ARCP Securities prior to October 29, 2014. Also excluded from the Class is any Class Member that validly and timely requested exclusion in accordance with the requirements set by the Court in connection with the Notice of Pendency of Class Action (“Pendency Notice”) previously provided to the Class.

4. As background, Gilardi has implemented successful claims administration programs in more than a thousand securities class actions during our more than three decades as an administrator. Our experience includes many of the largest and most complex settlement administrations of both private litigation matters and of actions brought by government securities regulators. More information on Gilardi’s experience can be found on its website at [www.gilardi.com](http://www.gilardi.com).

5. On July 23, 2019, this Court appointed Gilardi as Notice Administrator to supervise and administer the notice of class certification. ECF No. 905. In connection with the Court’s Order, commencing on August 6, 2019 and as of September 26, 2019, Gilardi has mailed 183,102 postcard notices to potential Class Members and other entities, including postcard notices sent to institutions which requested copies to mail directly to their clients, as well as brokerages, nominees and custodial banks Gilardi has identified over the course of its claims administration experience, and institutions included on the Securities & Exchange Commission’s list of active brokers and dealers.

6. In addition to the mailed postcard notices, on August 6, 2019, Gilardi had the contents of the postcard notice published in *The Wall Street Journal* and in a press release over *Business Wire*, established a case-dedicated website ([www.arcpsecuritieslitigation.com](http://www.arcpsecuritieslitigation.com)) which

includes the postcard notice, Pendency Notice, answers to frequently asked questions and relevant information and documentation about the litigation, and also utilized targeted online tools to disseminate notice of class certification. To date, the website used for class notice has received more than 35,000 visits and Google Adwords, Twitter Sponsored Tweet and Facebook campaigns collectively generated more than 66,000 clicks. Gilardi also provided the Pendency Notice to the Depository Trust Corporation (“DTC”) on the DTC Legal Notice System (“LENS”) for publication on the LENS notice system and established a case-dedicated, toll-free phone number for the case (1-866-579-5209).

7. The proposed notice plan for the settlement and claim processing phase of this matter utilizes the information on potential Class Members obtained through the Notice of Pendency process and uses procedures that have been designed to provide extremely effective direct mail notification to every investor who is a member of the Class and who can be identified with reasonable effort. In addition, direct email notification will be provided to hundreds of financial institutions that regularly monitor proposed securities class action settlements. By themselves, the proposed direct mail and email notification will be sufficient to reach an extremely high percentage of the Class. All persons and entities identified as potential Class Members will be sent a complete Notice of Proposed Settlement of Class Action (“Settlement Notice”) and Proof of Claim and Release form (“Proof of Claim”) package (collectively, the “Claim Package”), which will include instructions for claim submission and objecting to any aspect of the Settlement. The proposed notice plan also calls for publication of a summary version of the Settlement Notice (the “Summary Notice”) in a national newspaper read by securities investors, as well as placement of the Summary Notice on a national business newswire service. Details of the complete proposed notice plan are outlined below.

8. Subject to the Court's approval of the notice plan set forth in the Order Preliminarily Approving Settlement and Providing for Notice ("Preliminary Approval Order"), Gilardi will initially send a copy of the Claim Package by First-Class Mail to all persons and entities previously identified as potential Class Members in connection with the mailing of the postcard notice, which includes all persons and entities previously identified as potential Class Members by ARCP Securities' stock transfer agent.

9. As with the postcard notice mailing, Gilardi will send a Claim Package and appropriate cover letter to each entity included on a proprietary list of approximately 250 Nominee Holders. This list also includes a group of firms and institutions who have requested notification on every case involving publicly-traded securities and is contained in a database created, maintained, and updated as necessary by Gilardi. In Gilardi's experience, the institutions included in this database represent a significant majority of the beneficial holders of the securities in most settlements involving publicly-traded companies.

10. Gilardi will also send a Claim Package and appropriate cover letter to each financial institution registered with the U.S. Securities and Exchange Commission ("SEC") as a potential Nominee Holder. There are approximately 4,500 institutions on that list, which changes from time to time and is, therefore, periodically updated. The cover letter accompanying the Claim Package would notify the Nominee Holders of the proposed Settlement and inform them of their obligation to either provide to Gilardi the names and addresses of their clients who may be Class Members if they had not already done so in connection with the Notice of Pendency or request copies of the Claim Package to provide directly to their customers and clients.

11. Gilardi has long-standing relationships with all of the primary Nominee Holders, and they are accustomed to providing us with information regarding their clients from their records and obtaining reimbursement for doing so. Gilardi will provide several supplemental notification

letters to any Nominee Holder who did not respond in connection with the mailing of the postcard notice and also does not respond to the initial request for potential Class Member names and addresses in connection with this Settlement.

12. Gilardi will promptly mail the Claim Package to all potential Class Members newly identified by Nominee Holders. Gilardi will also send copies of the Claim Package directly to Nominee Holders who indicate that they will directly forward the documents to their customers and clients who may be Class Members.

13. Prior to mailing, all name and address data obtained by Gilardi will be reviewed to identify and eliminate exact duplicates and incomplete data. Addresses will be checked against the United States Postal Service's National Change of Address database to identify address changes and obtain current mailing addresses where available. Any Claim Packages that are returned as undeliverable mail will be reviewed to determine if an alternative or updated address is available from the Postal Service, and will be re-mailed to the updated or alternative address. In cases where no address is available from the Postal Service, Gilardi will attempt to obtain updated or alternative address information from private databases, and will re-mail the Claim Package if such information is available.

14. Gilardi will supplement the direct mailing program described above by publishing the Summary Notice in *The Wall Street Journal*. The Summary Notice will also be posted with *Business Wire*, an online newswire service, where it will be available for a month. News outlets often use posted notices as the basis for their own stories about litigation settlements involving publicly-traded companies, thereby creating added awareness of the proposed settlement among investors.

15. Gilardi will also cause the Claim Package to be published by the Depository Trust Corporation ("DTC") on the DTC Legal Notice System ("LENS"). LENS enables participating

banks and brokers to review the Claim Package and directly contact the Claims Administrator to obtain copies of the Claim Package for their clients who may be Class Members.

16. The Claim Package will also be provided electronically to approximately 450 institutions that monitor securities class actions for their investor clients and regularly act on their behalf in these matters.

17. Throughout the notification and claims processing period, Gilardi will maintain the previously established toll-free number to accommodate potential Class Members' inquiries.

18. Gilardi will also update the previously established website and post key documents related to the settlement, including the Stipulation of Settlement, the Settlement Notice and Proof of Claim and the executed Preliminary Approval Order, and any other documents that the parties or the Court require to be posted. Gilardi will also update the frequently asked questions section of the website and provide other summary information regarding the case and Settlement and highlight important dates, including the date of the settlement approval hearing and any changed deadlines. All posted documents will be available for downloading from the website.

19. The Claim Package, settlement website, and key documents will be provided in English, which is the language used for most company SEC filings and proxy materials. In our experience, the typical demographic of most securities-related settlement classes is English-speaking, and as such the costs and extra work associated with translation of documents is generally not required unless there is specific evidence that the majority of the class would only speak another language. In addition, telephone and email support will be available to Class Members in all major languages through Gilardi and its affiliated Computershare partners.

20. Based on our experience, we estimate that the combined direct mail and publication program proposed will provide notice to more than 95% of the investors that are potential Class Members. Because the Notice directs the cooperation of Nominee Holders and provides for the

reimbursement of their costs of doing so, we have experienced and continue to anticipate a high level of compliance from those institutions, many of which have developed regular systems for providing the required information. In addition, the proposed publication will create additional awareness of the Settlement, and we expect to receive a number of additional requests for the Claim Package through the designated toll-free number and via email as a direct result of publication.

21. The procedures proposed here have proven extremely effective at compiling a very comprehensive list of potential class members and providing notice to those potential class members in thousands of securities class action matters prior to this case. Substantially similar notice plans have been approved by numerous courts as being the best notice practicable under the circumstances. Gilardi will, of course, provide a reporting declaration outlining the results of the implemented notice plan and the number of Claim Packages that are ultimately delivered, and will do so prior to, or in conjunction with, Lead Plaintiff's request that the Settlement be finally approved.

22. Given the number of postcard notices mailed to date, ARCP Securities' trading history during the relevant period, including information regarding the volume of shares traded and limited information about the number of trades executed, as well as analysis of the requirements for claims under the proposed Plan of Allocation, we estimate that we will mail Claim Packages to approximately 240,000 potential Class Members.

23. Because this matter involves the purchase and sale of securities, which is protected and private financial information held by a large number of different brokerages, custodians and other financial institutions, a claims process is necessary to gather the required information regarding each claimant's purchases or acquisitions, sales, and holdings of ARCP Securities during the periods



relevant to the proposed Plan of Allocation. This stock transaction information will then be used to evaluate the eligibility of each claim to receive any distribution from the Settlement.

24. There are three typical ways that a claim may be submitted to Gilardi in securities settlements such as this: a claimant may submit a claim form and supporting documents by mail; a claimant may submit a claim form and supporting documents via an interactive service provided on the settlement website; or a financial institution or other third party which has the authority to do so may file claims on behalf of its clients in electronic spreadsheet format. In our experience, the vast majority of claims, typically at least 80%, are filed by institutions or third-party services which submit claims on behalf of their clients who may be class members, removing the burden from those claimants to file on their own behalf.

25. A claim may be determined ineligible for recovery for various reasons related to the overall completeness of the claim and the claimant or transaction information as presented. For example, where the Proof of Claim did not include any purchases or acquisitions of ARCP Securities during the Class Period, where calculation of the Proof of Claim under the Plan of Allocation did not result in a net loss, or where the beneficial owner as presented was determined to be insufficient or otherwise ineligible, the claim will be deemed ineligible for recovery and claimants are so advised.

26. In addition to making these determinations, Gilardi also reviews claims for deficiencies related to specific missing or incorrect information which may be resolved with further information; for example, where a claim is missing supporting documentation, lacking a signature, appears to be missing information regarding transactions or holdings, or presents transaction information which does not match the known history of the security. If those deficiencies can be corrected by an analyst on review, some of these claims may result in a different loss determination and move into eligible status. Furthermore, Gilardi will typically waive

deficiencies deemed to be insignificant, which may include, but is not limited to, deficiencies which impact only the portion of the claim which calculates no recognized loss, and partially or undocumented claims, partial or missing signatures, and other immaterial deficiencies where the loss of the claim falls below certain recognized loss amount thresholds.

27. Deficiencies will be addressed during the normal course of the administration and claimants with deficient Proofs of Claim will be provided an opportunity to cure these deficiencies prior to distribution of the settlement proceeds. In addition, prior to distribution of the settlement proceeds, those claimants with deficient claims will be notified of the proposed rejection of their claim and will be provided an opportunity to furnish additional information which may validate the claim, or request more information about the reason why the claim is rejected. Claimants who furnish additional information which remains insufficient or who request further review by the Claims Administrator of their rejected claim and who remain dissatisfied with the determination made by the Claims Administrator will also be given instructions for further appealing adverse determinations to the Court to obtain a final determination for the claim.

28. In our experience, not all class members submit claims, and some of the claims submitted are not valid or eligible to receive distribution according to the plan of allocation as outlined above.

29. In our experience, the notice process and claims process outlined above are consistent with those undertaken in other securities settlements of similar size and complexity.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed this 27th day of September, 2019, at San Rafael, California.



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MICHAEL JOAQUIN

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on September 30, 2019, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses on the attached Electronic Mail Notice List, and I hereby certify that I caused the mailing of the foregoing via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

s/ Debra J. Wyman

DEBRA J. WYMAN

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## Mailing Information for a Case 1:15-mc-00040-AKH In re American Realty Capital Properties, Inc. Litigation

### Electronic Mail Notice List

The following are those who are currently on the list to receive e-mail notices for this case.

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